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ADOPTION SECTION

ENVIRONMENTAL PROTECTION

ENVIRONMENTAL MANAGEMENT

DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH

Notice of Readoption

Pollution Prevention Program Rules

Readoption with Technical Changes: N.J.A.C. 7:1K

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-9, 13:1D-35 et seq., and 34:5A-1 et seq.

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Effective Date: January 23, 2014.

New Expiration Date: January 23, 2021.

Take notice that pursuant to the provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Pollution Prevention Program Rules at N.J.A.C. 7:1K are readopted and shall continue in effect for a seven-year period. The rules had been scheduled to expire on February 24, 2014. The Department of Environmental Protection (Department) has reviewed these rules and has determined that the rules should be readopted with technical changes discussed below because they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing.

The Pollution Prevention Program rules implement the goals of the Pollution Prevention Act (P2 Act), N.J.S.A. 13:1D-35 et seq., to reduce the use and generation as waste and multimedia

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releases of hazardous substances at industrial facilities. The P2 Act requires "priority industrial facilities" to examine their production processes to determine if they are using hazardous substances in the most efficient way possible. Priority industrial facilities are those that must prepare and submit a toxic chemical release form under the Federal Emergency Planning and Community Right to Know Reporting Requirements at 42 U.S.C. § 11023, as well as those that meet one or more of the several criteria in the Pollution Prevention Program Rules.

The rules require priority industrial facilities to prepare pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports as required by the P2 Act. The rules also provide for the development and issuance of multimedia permits covering a facility's air, water, and waste requirements under a pilot program established under the P2 Act. The pilot program has been completed.

The rules are readopted with technical changes to update addresses throughout the rules, and to correct cross-references as described below. Existing N.J.A.C. 7:1K-3.1 contains provisions for the preparation, revision, or modification of pollution prevention plans, plan summaries, and progress reports, and refers to N.J.A.C. 7:1K-3.6 and 3.8. N.J.A.C. 7:1K-3.6 and 3.8 specify when and why modification should occur; however, N.J.A.C. 7:1K-3.9 and 3.10 also specify certain modification requirements. Therefore, the references to pollution prevention plan, plan summary, and progress report revisions or modifications at N.J.A.C. 7:1K-3.1(a)4, (b)4, (c)4, (d)4, and (e)4 are corrected to cite to N.J.A.C. 7:1K-3.6, 3.8, 3.9, and 3.10.

N.J.A.C. 7:1K-3.6(b) specifies what the Department must include in a rule proposal if it designates a hazardous substance for pollution prevention planning; specifically, N.J.A.C. 7:1K-3.6(b)3 requires the Department to specify a threshold planning quantity for each hazardous substance. Existing N.J.A.C. 7:1K-3.6(b)3 incorrectly refers to N.J.A.C. 7:1K-3.4(b), for

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purposes of providing additional information related to hazardous substances with a proposed threshold less than 10,000 pounds. N.J.A.C. 7:1K-3.4(b) does not address threshold quantities of hazardous substances; rather, it specifies what the owner or operator of a priority industrial facility must include in a pollution prevention plan, plan summary, or plan progress report. Threshold quantities of hazardous substances are discussed in N.J.A.C. 7:1K-3.5; accordingly, N.J.A.C. 7:1K-3.6(b)3 is corrected to reference N.J.A.C. 7:1K-3.5(b) and not N.J.A.C. 7:1K-3.4(b).

“Hazardous substance” is defined at N.J.A.C. 7:1K-1.5, in part, as any other substance which the Department defines as a hazardous substance pursuant to N.J.A.C. 7:1K-3.5. As discussed above, N.J.A.C. 7:1K-3.6 contains the criteria by which the Department can designate a substance as hazardous for purposes of pollution prevention planning. N.J.A.C. 7:1K-3.5 addresses threshold quantities of hazardous substances, not the means by which a hazardous substance is identified. Therefore, the definition is corrected to refer to N.J.A.C. 7:1K-3.6.

N.J.A.C. 7:1K-3.2 specifies the criteria by which a facility not subject to 42 U.S.C. § 11023 can be designated a priority industrial facility. Existing N.J.A.C. 7:1K-3.2(b)1 incorrectly references N.J.A.C. 7:1K-3.4(a) or (b) when discussing the establishment of threshold quantities. N.J.A.C. 7:1K-3.4(a) and (b) do not address the establishment of threshold quantities of hazardous substances; rather, they specify what the owner or operator of a priority industrial facility must include in a pollution prevention plan, plan summary, or plan progress report. The establishment of threshold quantities of hazardous substances is discussed in N.J.A.C. 7:1K-3.5; accordingly, N.J.A.C. 7:1K-3.2(b)1 should reference N.J.A.C. 7:1K-3.5(a) or (b) and not N.J.A.C. 7:1K-3.4(a) or (b).

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Existing N.J.A.C. 7:1K-3.11 governs the Department's review of pollution prevention plans, plan summaries, and progress reports. In particular, N.J.A.C. 7:1K-3.11(c)2ii(3) addresses the review of pollution prevention activities that occurred prior to 1987. The existing rule incorrectly references N.J.A.C. 7:1K-4.3(b)2v, which specifies the environmental release data that a facility must include in Part 1A of a pollution prevention plan, but does not specifically address pre-1987 activities. N.J.A.C. 7:1K-4.3(b)2vii and viii deal with the inclusion of pollution prevention techniques implemented at priority industrial facilities prior to 1987 or prior to the preparation of an initial pollution prevention plan, and the inclusion of pollution prevention progress achieved between 1987 and the initial preparation of a pollution prevention plan. Accordingly, the reference at N.J.A.C. 7:1K-3.11(c)2ii(3) is corrected to N.J.A.C. 7:1K-4.3(b)2vii and viii.

The Department is changing N.J.A.C. 7:1K-3.4(c) to refer to N.J.A.C. 7:1K-3.10, rather than N.J.A.C. 7:1K-3.9(c). N.J.A.C. 7:1K-3.4 deals with the scope of pollution prevention planning documents, and N.J.A.C. 7:1K-3.4(c) specifies the requirements for production processes established after January 1, 1992. N.J.A.C. 7:1K-3.9 and 3.10 both deal with modifications to pollution prevention planning documents; however, N.J.A.C. 7:1K-3.10 deals specifically with modifications made to production processes established after January 1, 1992. Therefore, the reference at N.J.A.C. 7:1K-3.4(c) should be N.J.A.C. 7:1K-3.10.

N.J.A.C. 7:1K-4.3 specifies the contents of a Pollution Prevention Plan; in particular, N.J.A.C. 7:1K-4.3(c)2ii specifies the process-level pollution prevention reduction information that must be included for each targeted production process. Existing N.J.A.C. 7:1K-4.3(c)2ii incorrectly references N.J.A.C. 7:1K-6.1(c)5ii(1) through (7) when discussing the element of a Plan Progress Report. Existing N.J.A.C. 7:1K-6.1(c) specifies that a paper copy of a Plan

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Progress Report must be submitted if any portion of the Report is being claimed as confidential. N.J.A.C. 7:1K-6.1(f) specifies the minimum contents of a Plan Progress Report. Therefore, the correct citation at N.J.A.C. 7:1K-4.3(c)2ii should be N.J.A.C. 7:1K-6.1(f)5ii(1) through (7).

In the 2005 readoption of the rules (see 37 N.J.R. 984(a) and 3637(c)), a new N.J.A.C. 7:1K-5.1(b), dealing with electronic reporting hardship exemptions, was added and then-existing N.J.A.C. 7:1K-5.1(b) was recodified as subsection (e). However, references to N.J.A.C. 7:1K-5.1(b) in the chapter were not amended, making them incorrect. Accordingly, references to provisions of former N.J.A.C. 7:1K-5.1(b) at N.J.A.C. 7:1K-4.3(b)3 and (c)3 and 4.5(a)7 are corrected to reference provisions of current N.J.A.C. 7:1K-5.1(e).

N.J.A.C. 7:1K-8.4 deals with correspondence, inquiries, and notices related to confidentiality claims. N.J.A.C. 7:1K-8.4(a)1 speaks of notices requesting substantiation of claims, and cross-references N.J.A.C. 7:1K-9.2(a)1ii, which does not exist. The correct reference is to N.J.A.C. 7:1K-9.3(a)1ii.

Department addresses are updated at N.J.A.C. 7:1K-1.8, 4.9(a)1, 8.4(b), and 12.3(a).

Full text of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

7:1K-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

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"Hazardous substance" means any substance on the list established by the United States

Environmental Protection Agency for reporting pursuant to 42 U.S.C. § 11023, and any other substance which the Department defines as a hazardous substance for the purposes of the Act pursuant to N.J.A.C. 7:1K-[3.5]**3.6**.

...

7:1K-1.8 Access to public information

Interested persons may obtain information on the pollution prevention program, copies of pollution prevention reporting forms, and copies of the Pollution Prevention Planning Guidance

Document by contacting:

Office of Pollution Prevention and Right to Know

Department of Environmental Protection

Mail Code 22-03C

PO Box [443] **420**

Trenton, New Jersey 08625-[0443]**0420**

(609) 777-0518, or

<http://www.nj.gov/dep/opppc/>

SUBCHAPTER 3. POLLUTION PREVENTION PLANNING REQUIREMENTS

7:1K-3.1 Preparation and submission of pollution prevention planning documents by priority industrial facilities

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(a) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form for calendar year 1993 pursuant to 42 U.S.C. § 11023 and having a North American Industry Classification System code, as designated by the Federal Office Management and Budget as listed in Table 3.1(a) of Appendix D, shall:

1.- 3. (No change.)

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6, [and] 3.8, **3.9, and 3.10.**

(b) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form for calendar year 1995 pursuant to 42 U.S.C. § 11023 and having a North American Industry Classification System code, as listed in Table 3.1(b) of Appendix D, shall:

1.- 3. (No change.)

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6, [and] 3.8, **3.9, and 3.10.**

(c) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form for calendar year 1999 pursuant to 42 U.S.C. § 11023 and having a North American Industry Classification System code, as designated by the Federal Office of Management and Budget, as listed in Table 3.1(c) of Appendix D of this chapter, shall:

1.- 3. (No change.)

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6, [and] 3.8, **3.9, and 3.10.**

(d) The owner or operator of an industrial facility that is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. § 11023, but which is designated as a priority

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industrial facility for pollution prevention planning purposes pursuant to N.J.A.C. 7:1K-3.2, shall:

1. – 3. (No change.)

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6, [and] 3.8, **3.9, and 3.10.**

(e) The owner or operator of a priority industrial facility who was not required to prepare and submit pollution prevention planning documents pursuant to (a) or (b) above, but who subsequently becomes subject to the filing of a toxic chemical release form pursuant to 42 U.S.C. § 11023, for example, by the U.S. EPA's addition of new hazardous substances or new North American Industry Classification System codes, shall:

1. – 3. (No change.)

4. Revise or modify the industrial facility's Pollution Prevention Plan or Plan Summary as required by N.J.A.C. 7:1K-3.6, [and] 3.8, **3.9, and 3.10.**

(f) –(j) (No change.)

7:1K-3.2 Designation of individual industrial facilities not subject to 42 U.S.C. § 11023 as priority industrial facilities

(a) (No change.)

(b) The Department may issue a directive designating an individual industrial facility which is not required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. § 11023 as a priority industrial facility for pollution prevention planning purposes if it determines that the industrial facility meets one or more of the following criteria:

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1. The industrial facility uses or manufactures a hazardous substance in a quantity greater than the threshold established for the hazardous substance pursuant to N.J.A.C.

7:1K-[3.4(a)]**3.5(a)** or (b);

2.-4. (No change.)

(c)-(e) (No change.)

7:1K-3.4 Scope of pollution prevention planning documents

(a)-(b) (No change.)

(c) The owner or operator of a priority industrial facility is not required to include in Part IB or Part II of a Pollution Prevention Plan or in a Pollution Prevention Plan Progress Report information pertaining to improvements in pollution prevention for production processes established after January 1, 1992, until the first five-year revision of the Pollution Prevention Plan and Pollution Prevention Plan Summary is prepared for the industrial facility at which the production process is carried out after the establishment of the production process, or until five years after the establishment of the production process, whichever is later. See N.J.A.C. 7:1K-[3.9(c)]**3.10**.

7:1K-3.6 Additional hazardous substances for which pollution prevention planning is required

(a) (No change.)

(b) A rule proposal to designate a hazardous substance not on the TRI list to Appendix A, Additional Hazardous Substances For Pollution Prevention Planning, incorporated herein by reference, shall specifically include, in addition to the requirements of N.J.A.C. 1:30:

1. – 2. (No change.)

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3. The proposed threshold planning quantity for the hazardous substance, in pounds. If the proposed threshold planning quantity is less than 10,000 pounds, the proposal shall also contain the information required by N.J.A.C. 7:1K-[3.4(b)]**3.5(b)**.

(c) (No change.)

7:1K-3.11 Department review of Pollution Prevention Plans, Plan Summaries and Plan Progress Reports

(a)-(b) (No change.)

(c) The Department shall conduct its review of Pollution Prevention Plans, Plan Summaries and Plan Progress Reports by applying the following review criteria:

1. (No change.)

2. For the purpose of review, but not for the purpose of enforcement action under N.J.A.C. 7:1K-12, the Department shall determine and evaluate the following:

i. (No change.)

ii. Whether the pollution prevention methods contained in the Pollution Prevention Plan, Plan Summary and Plan Progress Report are consistent with the definition of pollution prevention found at N.J.A.C. 7:1K-1.5. Pollution prevention methods include, but are not limited to:

(1)-(2) (No change.)

(3) Pollution prevention activities that occurred prior to 1987 or prior to preparation of an initial Pollution Prevention Plan and which are recorded in a Pollution Prevention Plan pursuant to N.J.A.C. 7:1K-4.3(b)2[v]**vii or viii**;

iii.-xi. (No change.)

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(d) – (e) (No change).

SUBCHAPTER 4. POLLUTION PREVENTION PLANS

7:1K-4.3 Contents of Part I of a Pollution Prevention Plan

(a) (No change.)

(b) Part IA of a Pollution Prevention Plan shall be based on information covering the base year as defined in N.J.A.C. 7:1K-1.5 and shall contain, at a minimum, the following:

1.- 2. (No change.)

3. Process-level information (Note: This is the same information to be reported in the P2 Plan Summary pursuant to N.J.A.C. 7:1K-5.1[(b)4i](e)4i and/or the P2-115, Pollution Prevention Process Level Data Worksheet, pursuant to N.J.A.C. 7:1K-4.9, as applicable.):

i.-iv. (No change.)

4.-6. (No change.)

(c) Part IB of a Pollution Prevention Plan shall contain information on the reduction or increase in use of hazardous substances and the generation of hazardous substances as nonproduct output, including, but not limited to, the following:

1. (No change.)

2. Information on Targeted Production Processes:

i. (No change).

ii. Process-level information on pollution prevention reductions for each hazardous substance within each targeted production process, including, but not limited to (Note: This is the same information to be reported in the Plan Progress Report pursuant to N.J.A.C.

7:1K-6.1[(c)5ii(1)](f)5ii(1) through (7).):

(1)-(7) (No change.)

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3. A reassessment of the industrial facility's five-year goals for reductions reported in the facility's Pollution Prevention Plan Summary pursuant to N.J.A.C. 7:1K-5.1[(b)3](e)**3** and 5, if applicable.

7:1K-4.5 Part II of a Pollution Prevention Plan

(a) Part II of a Pollution Prevention Plan shall contain, at a minimum, the following information:

1.- 6. (No change.)

7. For the industrial facility, the five-year numeric goal for reducing the use of each hazardous substance (Note: The facility-level goals to be reported in (a)6 and 7 are the same as those reported in the Plan Summary pursuant to **N.J.A.C. 7:1K-5.1[(b)3i](e)**3i**** and ii.);

8.- 13. (No change.)

(b)-(c) (No change.)

7:1K-4.9 Pollution Prevention Process-Level Data Worksheet in the Pollution Prevention Plan

(a) An owner or operator of a priority industrial facility shall include in a Pollution Prevention Plan a P2-115, Pollution Prevention Process-Level Data Worksheet, available from the Department (at address in (a)1 below), for recording key process-level data elements required for each process in the Pollution Prevention Plan. These include type and units of product, process-level use and nonproduct output (NPO), and data components needed to compute use and NPO. The worksheet(s) shall include base year data and shall be annually updated and included in the Plan. At the discretion of the Department, an owner or operator may include in the Pollution Prevention Plan an alternate version of this worksheet, such as an electronic spreadsheet, as developed by the facility. The worksheet shall be included in the Pollution Prevention Plan by the

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next submittal to the Department of a Release and Pollution Prevention Report (RPPR), or by the next revision of the P2 Plan, whichever occurs first.

1. The worksheet may be obtained at the following address:

Office of Pollution Prevention and Right to Know

Department of Environmental Protection

Mail Code 22-03C

P.O. Box [443] **420**

Trenton, New Jersey 08625-[0443]**0420**

(609) 777- 0518, or

by internet: <http://www.nj.gov/dep/opppc/>

SUBCHAPTER 8. CONFIDENTIALITY CLAIMS

7:1K-8.4 Correspondence, inquiries and notices

(a) The Department shall direct all correspondence, inquiries and notices relating to confidentiality claims under N.J.A.C. 7:1K-8 through 11 to the person designated by the claimant pursuant to N.J.A.C. 7:1K-8.3 including without limitation the following:

1. Notices requesting substantiation of claims, under N.J.A.C. 7:1K-[9.2(a) 1ii]**9.3(a)1ii**;
- 2.- 4. (No change.)

(b) A claimant shall direct all correspondence, inquiries, notices and submissions concerning confidentiality claims under this chapter to the Department at the following address:

Office of Pollution Prevention and Right to Know

Department of Environmental Protection

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Mail Code 22-03C

PO Box [443] **420**Trenton, New Jersey 08625-[0443]**0420**

SUBCHAPTER 12. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR
ADJUDICATORY HEARINGS

7:1K-12.3 Procedures for requesting and conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment or confidentiality determination issued pursuant to the Act or this chapter, the violator or claimant shall submit the information required by (b) below to the following address:

Office of Legal Affairs

Attention: Adjudicatory Hearing Requests

Department of Environmental Protection

Mail Code 401-04L

P.O. Box 402

401 East State Street, 7th Floor

Trenton, New Jersey 08625-**0402**

(b)-(e) (No change.)